STATE OF MICHIGAN

COURT OF APPEALS

WALATHA BROOKS and PAMELA BROOKS,

Plaintiffs-Appellants,

v

SCOTT ALEXANDER VANLEEUWEN, SUZANNE VANLEEUWEN, a/k/a SUZANNE LEDUC, and CLINTON WAYNE SHIRES,

Defendants-Appellees,

and

TOYOTA MOTOR CREDIT CORPORATION,

Defendant.

UNPUBLISHED
July 13, 2001

No. 223512
Macomb Circuit Court
LC No. 98-002917-NO

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case stems from an automobile accident that occurred on July 8, 1995. Defendant Scott Vanleeuwen was driving westbound on Hall Road, a two-lane road, when he stopped to make a left turn into a driveway marked with a sign prohibiting left turns. Scott Vanleeuwen was followed by defendant Shires, who stopped behind Scott Vanleewen's car. Thomas Beauchemin came upon the cars in his truck, stopping about two car lengths back. Seeing plaintiff Walatha Brooks closing in fast behind him in a van, Beauchemin pulled over to the shoulder. Subsequently, plaintiff slammed into Shires' car. Plainitff's van careened to the left, crossed the center line, and struck an on-coming car.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under subrule (C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other

documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiffs first contend that the trial court erred in ruling that defendant Scott Vanleeuwen's negligence was not a proximate cause of plaintiff Walatha Brooks' injuries. However, the trial court did not rule that Scott Vanleeuwen's negligence was not a proximate cause of plaintiff's injuries. Rather, it determined that plaintiff was negligent and his negligence was greater than fifty percent. Because the circuit court did not address the issue raised, it has not been preserved for appeal. *Herald Co, Inc v Ann Arbor Pub Sch,* 224 Mich App 266, 278; 568 NW2d 411 (1997).

Plaintiffs next contend that the trial court erred in ruling as a matter of law that plaintiff Walatha Brooks was negligent because he was presented with a sudden emergency. We disagree.

Plaintiff's violation of the assured clear distance ahead statute, MCL 257.627(1), constitutes negligence per se. *McKinney v Anderson,* 373 Mich 414, 419; 129 NW2d 851 (1964). The fact that plaintiff overtook and struck the rear end of another vehicle in front of him is prima facie proof of negligence. MCL 257.402(a). Violation of either statute is not negligence or evidence of negligence if the driver was faced with a sudden emergency not of his own making. *Vander Laan v Miedema,* 385 Mich 226, 231; 188 NW2d 564 (1971); *McKinney, supra.*

Under the sudden emergency doctrine, one who suddenly finds himself in a place of danger and is required to act without time to consider the best means of avoiding the impending danger is not guilty of negligence if he fails to use what, upon hindsight, may appear to have been a better method, unless the emergency is brought about by his own negligence. *Lepley v Bryant,* 336 Mich 224, 235; 57 NW2d 507 (1953). The circumstances attending the accident must be either unusual or unsuspected. *Vander Laan, supra* at 232. A situation is "unsuspected" if it is suddenly revealed, i.e., it had not been in clear view for a significant length of time and is totally unexpected. *Id.* The fact that a preceding driver has suddenly stopped for a turn without signaling is not an unexpected emergency. *Spillers v Simons,* 42 Mich App 101, 106; 201 NW2d 374 (1972).

Assuming Beauchemin had to stop suddenly because defendants did, that did not create an unexpected emergency. *Id.* While plaintiff may not have been aware that there were cars stopped in front of Beauchemin, he has offered no explanation for failing to observe Beauchemin slowing and stopping. His deposition testimony indicated that he didn't observe Beauchemin because he had taken his eyes off the road to check his sideview mirrors. While the process of looking in the mirror may have interrupted plaintiff's actual view of the scene, he is still held to have had clear view of the road. *Vander Laan, supra* at 233. Therefore, the trial court did not err in ruling that reasonable minds could not differ in concluding that plaintiff was not presented with a sudden emergency and thus that plaintiff was negligent.

Finally, plaintiffs contend that the court erred in determining that plaintiff Walatha Brooks was more at fault than Scott Vanleeuwen and should have submitted the issue to the jury because reasonable minds could differ in assessing the parties' relative degrees of fault. This issue has not been preserved because plaintiffs have not briefed the merits of their argument or cited any supporting authority for it. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy